

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Affordable Connectivity	)	WC Docket No. 21-450
Program	)	

**COMMENTS OF VERIZON**

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Verizon believes that all Americans should have access to broadband, and strongly supports both the Emergency Broadband Benefit (EBB) program and its successor, the Affordable Connectivity Program (ACP). By enacting the ACP, which both extends and expands the EBB program framework, Congress has provided the Commission with the necessary resources to ensure that eligible households are able to obtain broadband service. However, the December 31, 2021 start date for the ACP presents significant implementation challenges for the Commission, the Universal Service Administrative Company (USAC), and service providers, and failure to address these real-world challenges could hurt the very consumers these programs are designed to serve. To prevent adverse impacts on EBB and ACP subscribers, the Commission should take action to ensure a consumer-friendly transition from the EBB program to the ACP.

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<sup>1</sup> The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc., including Tracfone.

## I. Introduction and Summary

In the EBB program, Congress created a new model for low-income broadband support that is based on giving eligible households access to a wide range of competitive service offerings. Over 1,200 broadband providers, offering many different fixed and mobile EBB-supported services, have elected to participate in the EBB program.<sup>2</sup> Verizon provides EBB-supported customers a wide range of broadband options, offering the EBB discount on all of its most popular fixed and mobile broadband service offerings, including widely available current Fios fixed broadband plans (which we call “Mix & Match”);<sup>3</sup> all legacy Fios plans; all Mix & Match (current and legacy) unlimited mobile broadband plans; LTE Home and 5G Home fixed wireless plans; and standalone mobile hotspot plans.<sup>4</sup> Tracfone, which became part of Verizon on November 23, 2021, offers EBB-supported mobile broadband services at no cost to eligible households under seven unique brands.

In the Infrastructure Act,<sup>5</sup> Congress extended and expanded the EBB framework by appropriating an additional \$14.2 billion and amending the Consolidated Appropriations Act of 2020 to create the permanent ACP.<sup>6</sup> Because two of the changes from the EBB program – modified eligibility standards and a reduced non-tribal benefit (\$30 rather than \$50) – take effect for new enrollees on December 31, 2021, the *Public Notice* and the *Transition Waiver Order*

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<sup>2</sup> See <https://www.fcc.gov/emergency-broadband-benefit-providers> (listing EBB participants).

<sup>3</sup> Verizon is not offering the EBB discount on 50/50 Mbps or below Mix & Match plans, which are offered only on a limited basis where technical limitations preclude higher speed offerings.

<sup>4</sup> “Everyone deserves ultra-fast internet,” <https://www.verizon.com/home/promo/emergency-broadband-benefit/> (last visited Dec. 8, 2021).

<sup>5</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“Infrastructure Act”).

<sup>6</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(c); 134 Stat. 1182, 2134 (2020) (“Consolidated Appropriations Act”).

contemplate that the EBB program will end no later than December 31, 2021 and that the ACP program will begin on December 31, 2021.<sup>7</sup>

The EBB-to-ACP transition will be challenging because the scheduled December 31, 2021 start date is only weeks away and before the likely release date for an order in this proceeding.<sup>8</sup> To ensure that the transition to the ACP proceeds as smoothly as possible, the Commission should (1) eliminate or modify EBB program requirements that are unnecessary for the ACP, such as the EBB program’s service provider election notice documentation requirement and 15-day claim deadline; (2) otherwise mirror the EBB rules to the greatest extent possible, declining to adopt new requirements unless those requirements are absolutely necessary to implement the ACP; and (3) give service providers maximum flexibility during the transition. In addition, to ensure that eligible households can use the ACP program to obtain and maintain access to broadband service, the Commission should eliminate application and enrollment “pain points” experienced by consumers, which in our experience have posed significant challenges to consumers attempting to navigate the National Verifier application process.

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<sup>7</sup> *Affordable Connectivity Program*, Order, WC Docket No. 21-450, DA 21-1477, ¶¶ 1, 4 (Nov. 26, 2021) (“*ACP Transition Waiver Order*”); *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, Public Notice, WC Docket No. 21-450, DA 21-1453, ¶ 3 (Nov. 18, 2021) (“*Public Notice*”).

<sup>8</sup> *ACP Transition Waiver Order*, ¶ 8 n.25 (“[W]e anticipate the Commission’s rules will be adopted in January, after the wind-down of the EBB Program and the start of the transition window for households enrolled in the EBB Program before the December 31, 2021 effective date of the delayed amendments.”).

## **II. To Maintain and Encourage the Wide Access to Broadband Congress Envisioned, the Commission Should Ensure A Smooth EBB-to-ACP Transition**

To implement the transition from the EBB program to the ACP, USAC and service providers must address two different kinds of consumers: (1) existing subscribers that enrolled in EBB prior to December 31, 2021; and (2) consumers that enroll after the start of the ACP.

### **A. Transitioning Existing Subscribers**

Pursuant to the Infrastructure Act, existing EBB subscribers may continue to receive their current benefit amount (up to \$50) during a 60-day period beginning on December 31, 2021,<sup>9</sup> after which their maximum benefit will decrease to \$30. To facilitate existing EBB subscribers' transition to the ACP, the Commission should take the steps outlined below.

***Provider participation.*** The *Public Notice* recognizes that provider participation in the ACP is voluntary and seeks comment on whether the Commission should establish a service provider election process modeled on the EBB program's election process.<sup>10</sup> While an election process would be consistent with the voluntary nature of the ACP, there does not appear to be time for providers to submit (and USAC to review and process) election notices before the projected December 31, 2021 start date for the ACP. Given that Congress contemplated a seamless transition to the ACP for existing EBB enrollees, the Commission should permit existing EBB providers to automatically continue providing supported service to existing subscribers.<sup>11</sup>

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<sup>9</sup> Infrastructure Act, div. F, tit. V, § 60502(b)(2).

<sup>10</sup> *Public Notice*, ¶¶ 14-19.

<sup>11</sup> As is discussed in more detail below, providers automatically transitioned to the ACP to continue serving existing EBB subscribers (1) should be permitted to withdraw from the ACP using relinquishment procedures adopted by the Commission in the January 2022 order; and (2)

***Application of the 60-day transition to reimbursements.*** In many cases, bill cycles do not coincide with a calendar month. The Commission should clarify that providers may claim full reimbursement, up to \$50, on the March 1, 2022 snapshot (which is within 60 days of the start of the transition) for any discounts provided to EBB subscribers for bill cycles that begin in February 2022 and end in March 2022. The Commission should not interpret the 60-day transition as requiring providers to pro-rate a \$50 claim for the February portion of the bill cycle and a \$30 claim for the March portion of the bill cycle. A requirement to pro-rate two different benefit amounts would not only be inconsistent with the Infrastructure Act, but would be impossible for providers to implement in the limited time before the transition begins.

***No opt-in requirement.*** The Commission should not adopt its proposal to require EBB subscribers that are eligible for the ACP “to opt-in or affirmatively request enrollment in [the ACP]” before the end of the transition period or some other deadline.<sup>12</sup> The Commission’s proposed requirement is not consumer-friendly: Because the response rate for the opt-in notices is likely to be low, especially if subscribers have to respond before the end of the 60-day transition, many existing subscribers will lose their broadband service and be forced to re-apply for the ACP benefit – a process that has proved time-consuming and frustrating for many applicants. That would leave many vulnerable consumers without access to a benefit (which, for many of these consumers, means no access to broadband) for some period of time, which Congress clearly did not intend. It would be far more consumer-friendly, and consistent with Congressional intent to ease consumers’ transition to the ACP, for the Commission simply to

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should be permitted to separately elect (without a supporting documentation requirement) whether and when to begin offering ACP-supported services to new enrollees.

<sup>12</sup> *Public Notice*, ¶¶ 122-123.

require providers to notify EBB subscribers that their benefit will decrease at the end of the transition period and that they may contact the provider to change or discontinue service.

***Subscriber notice requirement.*** The *Public Notice* seeks comment on the content, timing, and method of provider notices informing subscribers that their benefit will decrease at the end of the transition period.<sup>13</sup> Because the benefit change will occur less than seven weeks after the Commission issues its order in this proceeding, the Commission should adopt only a basic requirement to notify subscribers about the benefit change. Providers should have the flexibility to determine the content, timing, and method of the notice that will most effectively communicate the benefit change to their subscribers. If the Commission adopts only a basic requirement to notify subscribers that the maximum benefit amount is decreasing, Verizon estimates that it could begin sending notices about 15 days after the order. More complex or prescriptive notice requirements would take weeks to implement.

## **B. Enrolling New Customers**

To provide ACP-supported services to new enrollees, both USAC and service providers must modify numerous systems and processes. Providers must also modify websites, applications, disclosures, and customer communications. Verizon has been working hard to implement the many changes necessary to meet the new ACP requirements, including the reduced \$30 benefit and the expanded list of supported services.

However, it does not appear that Verizon or any other provider would be able to comply with the new ACP requirements and enroll new ACP subscribers starting on December 31st. Not only will providers not know all of the ACP requirements until the Commission adopts the ACP

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<sup>13</sup> *Id.*, ¶ 124.



order in mid-January, but they will need considerable time to implement any requirements adopted in that order. Among other things, providers will need time to implement the new ACP disclosure and consent rules, which according to the *Public Notice* are likely to differ from the corresponding EBB requirements.<sup>14</sup> Providers will also need time to implement the Commission’s interpretation of the new obligation to offer the ACP benefit on “any internet service offering.”

The Commission should give providers and USAC sufficient time to implement any new requirements that it adopts in the January order by adopting an April 1, 2022 target date, similar to the 60-day target that the *EBB Order* adopted for the start of EBB enrollments.<sup>15</sup> A target date later than April 1, 2022 may be necessary if the Commission finds that the “any internet service offering” requirement encompasses all legacy and grandfathered service plans (which it should not, as explained below). Because established providers may have many thousands of legacy service offerings, it would be a substantial task for providers to identify all legacy service offerings, determine all of the possible rate and discount combinations, and make the billing system changes necessary to correctly apply the ACP discount to all legacy services.

Before the April 1<sup>st</sup> target date, the Commission should give substantial flexibility to providers that elect to participate in the ACP. It should permit service providers to participate in the ACP as long as they offer the ACP benefit to new enrollees on at least one service offering,

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<sup>14</sup> See *Public Notice*, ¶ 100 (proposing or seeking comment on changing the description of the program as temporary and on requiring the provider to (1) notify the household of its ability to file a complaint; (2) notify the household that the provider may disconnect service for non-payment; (3) advise the household of the recertification process; and (4) notify the household that it can apply the benefit to any broadband service offering at the same terms available to ineligible households).

<sup>15</sup> *Emergency Broadband Benefit Program*, Order, 36 FCC Rcd 4612, ¶ 11 (2021) (“*EBB Order*”).

consistent with the EBB rules,<sup>16</sup> and otherwise continue to meet EBB requirements. Even though it will be challenging for service providers to make the necessary system changes and modify websites and other material, some providers may be in a position to apply the \$30 ACP benefit to one or more services by December 31<sup>st</sup> or shortly thereafter. Providers should have flexibility in this initial phase to determine which service(s) to offer to new enrollees through the ACP program. While many service providers may elect to apply the ACP benefit to the same services that they offered through the EBB program, the Commission should not require service providers to do so. Because prepaid service providers such as Tracfone focused on offering EBB-supported services at no cost to eligible households, without issuing bills, a requirement to apply a smaller \$30 benefit to the same services that were offered through the EBB program would require substantial billing and process changes that cannot be completed by December 31<sup>st</sup>.

The Commission also should make clear that an existing EBB provider may delay its election to participate in the ACP for new enrollees until it is able to meet program requirements. The *Public Notice* recognizes that providers may, for example, choose to “delay their election until their systems [are] prepared to support the application of the benefit across all available broadband services.”<sup>17</sup> However, a delayed election should not prevent an existing EBB provider from continuing to provide benefits to subscribers that were enrolled in EBB before December 31, 2021, consistent with the transition provisions of the Infrastructure Act.

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<sup>16</sup> *Id.*, ¶ 37 (“Approved providers must offer at least one EBB Program-reimbursed service to each of its eligible households within its service area.”).

### III. Providers' ACP Service Obligation Excludes Legacy Services

The *Public Notice* seeks comment on whether participating providers are required to apply the ACP benefit only to “the current offerings of a provider to new customers,” or are also required to apply the benefit to legacy or grandfathered plans.<sup>18</sup> The *Public Notice* also seeks comment on the application of the ACP benefit to equipment such as modems, routers, and hotspots (which the EBB program classifies as “associated equipment”),<sup>19</sup> and on whether the Commission should adopt minimum service standards.<sup>20</sup>

**Definition of “any internet service offering.”** The Infrastructure Act requires that a participating provider “allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households.”<sup>21</sup> The Commission should find that the “any internet service offering” obligation only covers current plans, i.e., that providers are not required to offer the ACP benefit on legacy or grandfathered plans (but may elect to do so). Pursuant to the Infrastructure Act, the “any internet service offering” obligation applies only to offerings that can be provided to an eligible household “at the same terms available to households that are not eligible households.”<sup>22</sup> If a plan is no longer generally available, such as a legacy or grandfathered plan, then it is not “available to households that are not eligible households” and thus not subject to the obligation.

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<sup>17</sup> *Public Notice*, ¶ 56.

<sup>18</sup> *Id.*, ¶ 53.

<sup>19</sup> *Id.*, ¶ 59.

<sup>20</sup> *Id.*, ¶ 54.

<sup>21</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

<sup>22</sup> *Id.*

Moreover, it is clear that the purpose of the “any internet service offering” amendment was to expand support to the *most current* services, not to impose program obligations on legacy services. Congress enacted the “any internet service offering” provision to replace the EBB program’s “standard rate” restriction, which prohibited EBB providers from applying the EBB benefit to any new service introduced after December 1, 2020.<sup>23</sup> Because the ACP is a permanent discount program, Congress had to replace the “standard rate” restriction with the “any internet service offering” provision so that ACP subscribers would have access to new services – such as higher-speed services and new pricing plans – that have been introduced since December 1, 2020 and will be introduced in the future. Without the amendment, ACP subscribers would forever have been limited to only those services that existed on December 1, 2020.

If the Commission nonetheless finds that providers must apply the ACP benefit to legacy services, it should at least make clear that providers are only required to offer the benefit to a legacy service’s existing customers. Because legacy services are not available to new customers, the “same terms” restriction means that providers have no obligation to provide a legacy service to an ACP customer not already subscribed to that service.<sup>24</sup>

***Associated equipment.*** Even though the Infrastructure Act removed the Consolidated Appropriations Act’s reference to “associated equipment,” the Commission still has the authority to provide ACP support for modems, routers, and similar equipment because they are “*necessary*

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<sup>23</sup> *Emergency Broadband Benefit Program*, Order, WC Docket No. 20-445, DA 21-802, ¶ 2 (July 7, 2021) (“The requirement that an internet service offering be offered as of December 1, 2020 is a statutory requirement that the Commission cannot waive.”).

<sup>24</sup> And, as explained above, because of the nature of prepaid services, Tracfone is able to offer the \$30 ACP benefit only on plans that cost \$30 or less, because it has no way to bill customers for the difference between the \$30 benefit and a higher-priced plan.

for the transmission functions of internet service offerings.”<sup>25</sup> There is no indication that the purpose of the Infrastructure Act amendments was to end support for modems and other associated equipment; rather, the removal of the “associated equipment” reference was part and parcel of Congress’s decision to expand the range of eligible services by eliminating the “standard rate” restriction in the original statute.

***Minimum service standards.*** The Commission should not impose minimum service standards on ACP-supported service offerings. Just as the Commission found that the Consolidated Appropriations Act “did not indicate Congressional intent that [the Commission] apply Lifeline’s minimum service standards for the EBB Program,”<sup>26</sup> the Commission should find that the Infrastructure Act does not “indicate Congressional intent” to apply minimum service standards to the ACP. To the contrary, the Infrastructure Act’s new requirement that providers offer the benefit on “any internet service offering” underscores Congress’s intent to continue, to an even greater extent than in the EBB program, “allowing consumers to select offerings that work best for their household.”<sup>27</sup>

#### **IV. The Commission Should Clarify the Infrastructure Act’s Consumer Protections**

The Infrastructure Act adds certain new consumer protection provisions to the EBB program’s requirements. The Commission should clarify that the credit check provision only precludes providers from conditioning access to the ACP benefit on the results of a credit check,

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<sup>25</sup> *EBB Order*, ¶ 78 (emphasis added).

<sup>26</sup> *EBB Order*, ¶ 74.

<sup>27</sup> *Id.*

and that providers may decline the re-enrollment of an ACP customer disconnected for nonpayment if the former customer has not cleared its debt in full.

***Credit checks.*** Pursuant to the new credit check provision added by the Infrastructure Act, a provider “may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.”<sup>28</sup> Because this restriction expressly prohibits credit checks only when they are used “in order to apply the affordable connectivity benefit to an internet service offering of the participating provider,”<sup>29</sup> it prohibits providers from conditioning access to the ACP benefit on the results of a credit check, but it does *not* prohibit providers from simply performing a credit check or from using the results of a credit check for other purposes. The Commission should confirm this understanding of the statute.

The Commission should not adopt the *Public Notice*’s overly-broad proposal to “prohibit providers from inquiring, requesting or otherwise causing a consumer to submit to a credit check, or from accessing a consumer’s credit information, before enrolling the consumer in the Affordable Connectivity Program.”<sup>30</sup> Such a broad prohibition on even performing credit checks is not only inconsistent with the plain language of the Infrastructure Act, but would (1) require providers to modify existing business processes, which would delay providers’ implementation of the ACP; and (2) substantially increase providers’ risk, especially the risk associated with the provision of costly devices.

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<sup>28</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

<sup>29</sup> *Id.*

<sup>30</sup> *Public Notice*, ¶ 81.

Verizon performs credit checks on new post-paid (and, in some instances, pre-paid) subscribers, but only performs “soft” credit checks that do not affect a consumer’s credit score and does not condition access to EBB-supported services on the results of credit checks.<sup>31</sup> We may perform a credit check on a new EBB customer because in some cases we use existing business processes that include a credit check to sign up both EBB customers and non-EBB customers. If the Commission interprets the Infrastructure Act’s credit check provision as imposing a ban on even performing a credit check in the ACP, Verizon would have to restructure those existing business processes, which would take several months.

More important, credit checks are necessary to check for fraud alerts, and – in particular – to assess risk for device purchases that are financed. If a customer seeks to finance a smartphone or other device (which can have a value of \$1,000 or more) on a device payment plan, Verizon must use credit checks to assess the risk of nonpayment. Consequently, the Commission should at least permit providers to use the results of credit checks to “determine which equipment or devices may be offered to a household,”<sup>32</sup> including whether to permit the customer to finance a device on a payment plan. The Commission should also find that nothing in the Infrastructure Act prevents a provider from “us[ing] the results of a credit check for services that are not covered by the ACP benefit if the household selects a bundled service plan,”<sup>33</sup> such as video service or a set-top box.

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<sup>31</sup> Consumers applying for Verizon wireless or wireline services will have their Verizon credit check classified by three major credit bureaus as “soft” credit inquiries that do not affect credit scores.

<sup>32</sup> *Public Notice*, ¶ 82.

<sup>33</sup> *Public Notice*, ¶ 82.

***Disconnection for non-payment.*** The Infrastructure Act also adds a new provision that permits a participating provider to “terminat[e] the provision of broadband internet access service to a subscriber after 90 days of non-payment.”<sup>34</sup> As an initial matter, the Commission should find that the 90-day non-payment period is measured from the original invoice date, which is consistent with standard industry billing practices and would reasonably limit providers’ financial exposure.<sup>35</sup>

The *Public Notice* seeks comment on how the Commission should reconcile the new disconnection provision with the preexisting requirement that a provider cannot decline to enroll a household based on “any past or present arrearages with a broadband provider.”<sup>36</sup> The only reasonable way to reconcile those provisions is to find that providers may not decline an initial ACP enrollment based on past arrearages but are permitted to decline an enrollment that follows the disconnection of an ACP-supported service (unless the disconnected subscriber clears its debt in full). The ability to disconnect a customer for non-payment would be meaningless if the provider were required to immediately re-enroll a disconnected customer that has not cleared its debt in full.

The Commission should not adopt its proposal “to require participating providers to provide adequate notice to subscribers of their delinquent status before terminating the subscriber’s service for non-payment,”<sup>37</sup> and should not prescribe either “the frequency of notice, timing, and method of communicating the notice” or “a process by which subscribers may

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<sup>34</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

<sup>35</sup> Under a 30-day billing cycle, for example, standard industry practice is that payment is due upon the invoice date; payment is past due after 30 days.

<sup>36</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

<sup>37</sup> *Public Notice*, ¶ 85.



dispute their provider's claim of non-payment.”<sup>38</sup> Those proposals conflict with providers' statutory obligation to apply to ACP subscribers “the participating provider's generally applicable terms and conditions as applied to other customers.”<sup>39</sup> Because all providers have an established process for providing multiple notices to customers during a 90-day non-payment period, providers must apply the same delinquency notices and processes to ACP subscribers as to other subscribers (except that they may not disconnect an ACP subscriber until after 90 days of nonpayment).

*Additional consumer protections.* Finally, the Infrastructure Act requires the Commission to promulgate rules in accordance with the Administrative Procedure Act (APA) to protect ACP consumers from several practices.<sup>40</sup> The *Public Notice* notes that there is an apparent conflict between the APA requirement for these rules and this proceeding's general exemption from APA requirements,<sup>41</sup> but suggests that the Commission may be able to find that there is good cause for other than strict adherence to APA requirements.<sup>42</sup>

The Infrastructure Act directs the Commission to adopt rules “to protect consumers who participate in, or seek to participate in” the ACP from (1) “inappropriate upselling or downselling” by a participating provider; (2) inappropriate requirements that a consumer opt in to an extended service contract; (3) inappropriate restrictions on the ability of a consumer to switch internet service offerings; (4) inappropriate restrictions on the ability of a consumer to switch participating providers; and (5) similar restrictions that amount to unjust and unreasonable

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<sup>38</sup> *Id.*

<sup>39</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B).

<sup>40</sup> *Id.*, sec. 60502(a)(3)(B)(ii).

<sup>41</sup> *Public Notice*, ¶¶ 91-92.

<sup>42</sup> *Id.*, ¶ 92 n.189.

acts or practices that undermine the purpose, intent, or integrity of the Affordable Connectivity Program.<sup>43</sup> The Infrastructure Act does not define important terms such as “inappropriate,” “upselling,” “downselling,” or “extended service contract.”

If the Commission finds that it may adopt rules implementing this provision in the January order, it should make clear that the Infrastructure Act prohibits the enumerated practices only if they are “inappropriate.” For example, contrary to the suggestion in the *Public Notice*,<sup>44</sup> the Infrastructure Act only bans *inappropriate* upselling and downselling. It does not prevent a provider from informing a customer about available service options, such as a lower-priced service that fits the customer’s budget or a more robust service that meets the customer’s bandwidth needs.

To implement this provision, the Commission should establish general principles or safe harbors for service providers. In particular, the Commission should find that a practice is “inappropriate” only if the provider applies that practice uniquely to consumers participating in the ACP (or seeking to participate in the ACP) *and* that practice has a substantial negative impact on ACP participants or potential participants. Congress designed the ACP so that the benefit would put eligible households on essentially the same footing as non-ACP households: Eligible households can use their benefit to obtain the same services, at the “same terms” as available to non-ACP households,<sup>45</sup> and must be “subject to the participating providers’ generally applicable terms and conditions as applied to other customers” (with only very limited specified exceptions

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<sup>43</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

<sup>44</sup> See *Public Notice*, ¶ 93 (“Are upselling and downselling always inappropriate, or are there instances where such practices are beneficial to the consumer?”).

<sup>45</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

such as the exemption from early termination fees).<sup>46</sup> Because the ACP framework is based on treating ACP subscribers the same as non-ACP subscribers in almost every respect, the Commission should find that any practices or processes that a provider applies in the same manner to both ACP and non-ACP households are not “inappropriate.”

At the same time, the Commission should find that it is not inappropriate for a provider to apply a practice uniquely to ACP participants based on a good faith belief that such practice will benefit ACP participants or potential participants. For example, shortly after the launch of the EBB program, Verizon informed the Commission that it had instructed its customer service representatives to suggest the lowest-cost Fios option (a \$39.99 per month 200/200 Mbps service) to consumers calling to use their EBB benefit with Verizon.<sup>47</sup> Even if that communication were considered “downselling,” which is by no means clear, it should not be considered “inappropriate” downselling: Verizon reasonably believed the 200/200 Mbps Fios option would be appropriate for many eligible households because they would receive a robust fiber broadband service with no data caps at a price that would be largely covered by the EBB discount. That type of communication could save consumers’ money by helping them understand the available options and how they compare to the benefit.

## **V. The Infrastructure Act Relies on Collaborative Outreach**

In the *EBB Order*, the Commission adopted a “broad, collaborative outreach, including the federal government, state, local, and Tribal governments, broadband Internet access providers, community groups, trade associations, Tribal communities, philanthropists, educators,

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<sup>46</sup> *Id.*, sec. 60502(b)(1)(B).

and other trusted institutions.”<sup>48</sup> The Commission declined to impose outreach obligations on service providers, finding that “providers are in the best position to understand how to market a new program to the communities they serve.”<sup>49</sup>

The Infrastructure Act endorses and expands the *EBB Order*’s collaborative outreach model by giving the Commission additional authority to conduct outreach campaigns, collaborate with other federal agencies, and provide grants to outreach partners.<sup>50</sup> It only imposes two targeted outreach requirements on service providers: (1) a requirement to notify new or renewing subscribers about the program; and (2) a requirement that “[a] participating provider, in collaboration with the applicable State agencies, public interest groups, and non-profit organizations, in order to increase the adoption of broadband internet access service by consumers, shall carry out public awareness campaigns....”<sup>51</sup>

***Notification requirement.*** Because providers offer different kinds of broadband services and because consumers may subscribe using various ordering processes (e.g., stores, online, call centers), the Commission should give providers the flexibility to determine how best to “notify all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll.”<sup>52</sup> In particular, the Commission should permit providers to elect such notification methods as (1) notifying a new subscriber about the ACP program during an online ordering process; (2) notifying a new subscriber about

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<sup>47</sup> Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, at 2 (May 28, 2021).

<sup>48</sup> *EBB Order*, ¶ 133.

<sup>49</sup> *Id.*, ¶ 135.

<sup>50</sup> See Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B).

<sup>51</sup> *Id.*, § 904(b)(8).

the ACP in an order confirmation email, text message, or mailing; or (3) displaying information about the ACP in a store. While Verizon has begun implementing notification processes based on its understanding of the requirement, it will not be able to finalize implementation until after the Commission adopts rules in mid-January.<sup>53</sup>

The Commission should make clear that providers are not required to send information about the ACP to new or renewing subscribers that have already enrolled in the ACP. The Commission should also make clear that the Infrastructure Act’s notification requirement is only prospective, i.e., that providers are only required to notify new subscribers about the ACP at the time of initial subscription or existing subscribers at the time of renewal. Contrary to the suggestion in the *Public Notice* that the requirement covers a provider’s “subscriber base,”<sup>54</sup> the notification requirement applies only “[w]hen a customer subscribes to, or renews a subscription to, an internet service offering.”<sup>55</sup>

If the Commission finds the purchase of prepaid service is subject to the notification requirement, it should require providers to notify prepaid customers about the ACP only at the time of the initial purchase, and that subsequent monthly purchases by the same prepaid customer are not each considered to be a subscription “renewal” requiring the provider to send another notification. A monthly notification requirement would inundate prepaid customers with repetitive messages.

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<sup>52</sup> *Public Notice*, ¶ 106.

<sup>53</sup> *Id.* (“We seek comment on whether providers will have adequate time to train their customer service representatives and prepare their systems in order to provide the required information to consumers on the December 31, 2021 effective date of the Affordable Connectivity Program.”).

<sup>54</sup> *Id.*

<sup>55</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B) (emphasis added).

***Provider collaboration with outreach partners.*** The *Public Notice* seeks comment on “the most effective ways providers can collaborate with state agencies, non-profit organizations, and public interest groups to promote the Affordable Connectivity Program.”<sup>56</sup> Because there are many potential outreach partners, each with a different mission or geographic focus, the Commission should not prescribe specific forms of collaboration. As the *EBB Order* recognizes, there are many different ways in which a provider could collaborate with non-profit organizations or other outreach partners.<sup>57</sup> The Commission should find that a provider can meet the collaboration requirement by publishing information targeted to potential outreach partners on its website, such as service provider contact information and descriptions of the provider’s enrollment process and supported services, which outreach partners could incorporate into their public awareness campaign materials.

***No advertising requirement.*** The Commission should not adopt the Public Notice’s proposal to impose a Lifeline-style advertising requirement on ACP providers.<sup>58</sup> The Lifeline program’s advertising obligation is required by section 214(e)(1)(B) of the Communications Act, which provides that Eligible Telecommunications Carriers (ETCs) shall “advertise the availability of [Lifeline] services and the charges therefor using media of general distribution.”<sup>59</sup> Congress could have imposed a similar advertising obligation on ACP providers but declined to do so, deciding instead to expand the collaborative outreach model adopted in the *EBB Order*.

If the Commission imposes an advertising or outreach requirement on service providers, it should give providers flexibility to determine how best to reach prospective ACP customers.

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<sup>56</sup> *Public Notice*, ¶ 114.

<sup>57</sup> *EBB Order*, ¶ 135.

<sup>58</sup> *Public Notice*, ¶ 115.

Prescriptive advertising requirements are unnecessary because there will be many competing providers, all of which will have a significant incentive to advertise their ACP-supported services. Verizon, for example, has advertised its EBB-supported offerings using multiple methods targeted to reach eligible households, including online advertising, paid search, social media, direct mail, and customer newsletters. Similarly, Tracfone has conducted both digital and non-digital outreach in many low-income areas including Tribal Lands.

## **VI. The Commission Should Make Targeted Changes to Program Procedures**

The Commission should modify certain program procedures to take into account lessons learned from the EBB program and differences between ACP and EBB requirements.

***Election notice documentation.*** The Commission should not adopt a service list or documentation requirement for ACP election notices.<sup>60</sup> An ACP supporting documentation requirement would be unreasonably burdensome and would delay the start of the ACP program because providers would have to assemble and submit documentation (which USAC would have to review) for “any internet service offering,” which could be many thousands of different services and rate combinations, rather than the more limited set of offerings that providers included in the EBB program.

More important, a documentation requirement is unnecessary because the Infrastructure Act eliminated the “standard rate” provision that was the basis for the EBB program’s documentation requirement.<sup>61</sup> Contrary to the suggestion in the *Public Notice*, supporting

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<sup>59</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>60</sup> *Public Notice*, ¶ 15.

<sup>61</sup> *EBB Order*, ¶¶ 21-22.

documentation is not necessary to ensure that providers comply with the requirement to offer ACP-supported services “at the same terms available to households that are not eligible households.”<sup>62</sup> The Commission can more efficiently monitor compliance with the “same terms” requirement by (1) requiring providers to certify that they will offer ACP-supported services at the same terms available to non-ACP households; and (2) directing USAC to conduct spot checks requesting supporting documentation for a sample of subscribers. In addition, the dedicated complaint process established by the Infrastructure Act will permit consumers to inform the Commission if a provider fails to offer an ACP-supported service “at the same terms available to households that are not eligible households.”<sup>63</sup>

***Relinquishment process.*** Because participation in the ACP is voluntary, the Commission should find that participating providers may relinquish their election without obtaining Commission approval. However, as the *Public Notice* suggests, it would be reasonable for the Commission to establish a process to ensure that “subscribers are provided adequate notice and given the opportunity to transfer their benefit to another service provider.”<sup>64</sup> The Commission should require a provider withdrawing from the program to send notices to its subscribers and to USAC, after which the provider would stop enrolling new ACP subscribers and continue providing benefits to existing customers for a transitional period, e.g., 90 days, so that subscribers would have time to transfer their ACP benefit to another provider if they elect to do so.

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<sup>62</sup> *Public Notice*, ¶ 15.

<sup>63</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii).

<sup>64</sup> *Public Notice*, ¶ 13.



***Claims process.*** The Commission should give providers 45 days from the snapshot date to submit and certify their ACP claims and 12 months to revise a claim, as in the Lifeline program. Because of the expansion of the number of supported services and the need to manage two different benefit amounts during the transition period, it would be difficult for ACP providers with many service offerings to meet the EBB program’s 15-day claim deadline, especially if there is no opportunity for revisions. Moreover, because the ACP is a longer-term program with a larger budget than the EBB program, the Commission can give providers more flexibility to submit and revise claims.<sup>65</sup> The Commission could give the Bureau the authority to modify the claims process if the ACP budget is nearing depletion, e.g., by shortening the period for upward revisions to claims.<sup>66</sup>

***Partial month reimbursement.*** Because the start of the ACP is only weeks away, USAC will have to continue using the existing snapshot method of reimbursement during the initial rollout. However, the snapshot method results in providers being under-reimbursed if a subscriber de-enrolls or transfers to another provider after the provider has applied the benefit but before the snapshot date. The Commission should seek further comment on how to revise the claims process so that providers are more fully reimbursed for benefits they have credited to subscribers.<sup>67</sup> The Commission should also assess whether partial-month reimbursement could reduce the incentive for some providers to game the reimbursement process by initiating benefit transfers late in a month, shortly before the snapshot date, to claim the full monthly discount.

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<sup>65</sup> *Id.*, ¶ 77.

<sup>66</sup> *Id.*, ¶ 78 (“Because funding for the Affordable Connectivity Program is limited, if the Commission allows revisions, we seek comment on imposing reasonable restrictions on upward revisions in the final months of the program when funds are close to exhaustion.”).

<sup>67</sup> *Id.*, ¶ 76.

***Benefit transfers.*** Consistent with the experience of other parties,<sup>68</sup> EBB subscribers transferred from Tracfone have reported that they did not request a transfer or were unaware that they would lose their Tracfone EBB service. In addition, Tracfone has experienced instances in which subscribers that asked to transfer back to Tracfone were repeatedly transferred out again by another provider. The Commission should at a minimum clarify that providers must separately obtain consent for each benefit transfer, and should also seek further comment on additional benefit transfer safeguards such as limits on transfers or independent verification of transfers.<sup>69</sup>

***National Verifier application process.*** To ensure that eligible households are able to use the ACP to obtain and maintain access to broadband service, it is essential that the Commission eliminate application and enrollment “pain points” experienced by consumers. In the six months since the EBB program launched, enrollment has already grown to over 8 million subscribers and continues to increase by about 1 million per month.<sup>70</sup> Still, over 40 percent of existing Lifeline households have not enrolled in the EBB program even though they are automatically qualified,<sup>71</sup> and in Tracfone’s experience the EBB application process continues to frustrate many applicants.

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<sup>68</sup> *Id.*, ¶ 101.

<sup>69</sup> *Id.*

<sup>70</sup> <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/>

<sup>71</sup> As of September 1<sup>st</sup>, 6,308,754 Lifeline households were enrolled in Lifeline. *See* USAC High Cost and Low Income Committee, Briefing Book at 54 (Oct. 25, 2021) <https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2021/2021.10.25-HCLI-Open-Session-Briefing-Book.pdf>. The most recent USAC EBB data shows that 3,707,580 Lifeline households were enrolled in EBB as of November 1<sup>st</sup>, or about 59 percent of the September 1<sup>st</sup> Lifeline enrollment. USAC, Additional EBB Program Data,

- *Opt-out states.* The Commission should adopt its proposal to permit existing Lifeline subscribers in the opt-out states (California, Texas, and Oregon) to submit an application to the National Verifier for the ACP if they choose.<sup>72</sup> However, Lifeline households in the opt-out states would still face hurdles to enroll in the ACP that are not faced by Lifeline households in other states. The Commission should require USAC to accept real-time application programming interface (API) access to the state administrators or accept daily files from either an ETC or the state administrator, or should approve ETC alternative verification processes.<sup>73</sup>
- *National Verifier API.* To streamline approval of ACP applications for subscribers requiring manual review by the National Verifier, the Commission should require USAC to make available the document transmission functionality of the National Verifier's service provider API. That functionality is not yet available even though the Commission directed USAC in the *EBB Order* to make available a service provider portal with an API that includes document transmission functionality.<sup>74</sup>

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<https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/additional-ebb-program-data/> (last visited Dec. 8, 2021).

<sup>72</sup> *Public Notice*, ¶ 40.

<sup>73</sup> Letter from John Heitmann, National Lifeline Association, to Marlene Dortch, FCC, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Attachment at 1 (Nov. 15, 2021).

## VII. The Commission Should Not Adopt Unnecessary New or Revised Requirements

To facilitate participation and continuity, the Commission should not adopt new or revised requirements that are not mandated by the Infrastructure Act and would unnecessarily delay or complicate the transition to the ACP.

**Usage rule.** If the Commission adopts a usage rule for the ACP as the *Public Notice* proposes,<sup>74</sup> it should adopt a modified version of the EBB program's usage rule, not the Lifeline usage rule proposed in the *Public Notice*.<sup>75</sup> Switching from the EBB rule to the Lifeline rule would require existing EBB providers to change their processes for monitoring usage, further complicating the EBB-to-ACP transition. Moreover, the Lifeline rule (1) is not consumer-friendly, because it requires providers to de-enroll subscribers after just one month of non-usage, even though a subscriber's non-usage is often temporary; and (2) is unnecessary to prevent waste because the EBB rule already prevents providers from claiming reimbursement if there is no usage. Rather than require providers to de-enroll subscribers after just one month of non-usage, the Commission should adopt the EBB usage rule but modify the rule to *permit* providers to de-enroll subscribers if there is no usage for an extended period, e.g., 180 days. Because providers could still only claim reimbursement for months in which the customer actually used the service, this modification would have no financial impact on the program.

**Form of consent.** The Commission should not adopt a requirement that providers obtain written consent from a subscriber prior to transferring or enrolling the subscriber.<sup>77</sup> Because oral

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<sup>74</sup> *EBB Order*, ¶ 49.

<sup>75</sup> *Public Notice*, ¶ 45.

<sup>76</sup> *Id.*, ¶ 48.

<sup>77</sup> *Id.*, ¶ 102.

consent is an acceptable form of consent in the EBB and Lifeline programs,<sup>78</sup> a written consent requirement for the ACP would require process changes that would take several months to implement.

***End-of-program affirmative opt-in.*** In the *EBB Order*, the Commission required providers to disconnect subscribers at the end of the program unless they had provided affirmative opt-in consent to remain with the provider.<sup>79</sup> If the Commission retains that requirement for the ACP, it should also continue to permit providers to obtain affirmative opt-in consent at the time of enrollment.<sup>80</sup> The alternative – requiring providers to attempt to obtain consent at a later date – is not consumer-friendly because subscriber response rates are likely to be lower, resulting in more subscribers losing broadband service at the end of the program, even when that is not the subscriber’s intent.

***Sales commissions.*** Just as the Commission declined to apply the Lifeline program’s ban on sales commissions to the EBB program,<sup>81</sup> it should decline to apply the sales commission ban to the ACP. Because the ACP covers “any internet service offering,” and because providers’ existing sales processes for some offerings may rely in part on commission-based compensation, imposing the Lifeline commission ban on the ACP would create uncertainty about whether existing compensation arrangements and sales processes are permissible under the rule.

***Reporting requirements.*** The Commission should not impose new reporting requirements on service providers. First, providers do not know if a subscriber had “no existing

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<sup>78</sup> *Id.*, n.207 (citing 47 CFR §§ 54.1612(a), 54.419(a)).

<sup>79</sup> *EBB Order*, ¶ 132.

<sup>80</sup> *Public Notice*, ¶ 104.

<sup>81</sup> *EBB Order*, ¶ 147.

broadband service” prior to enrolling in the ACP;<sup>82</sup> a provider would know, at most, that a household is a new customer for that provider, not whether the household previously obtained broadband service from another provider. Second, providers currently have no ability “to submit summary statistics on subscribers’ usage of plan features (*e.g.*, mobile data usage)” or “indicate the service plan characteristics – such as upload and download speeds, data allowances, and co-payment – associated with a subscriber’s service plan” on a quarterly or other periodic basis.<sup>83</sup>

## VIII. Conclusion

For the reasons stated herein, the Commission should ensure a smooth EBB-to-ACP transition by eliminating unnecessary EBB requirements, declining to apply new requirements unless they are absolutely necessary to implement the ACP, and giving providers significant flexibility during the transition.

Respectfully submitted,

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<sup>82</sup> *Public Notice*, ¶ 119.

<sup>83</sup> *Id.*, ¶ 120.